

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT P. GESCHKE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-1514
)	
WARDEN JOHN WALTON, DEPUTY)	District Judge W. Scott Hardy
WARDEN ERIC SCHWARTZ, DEPUTY)	Magistrate Judge Maureen P. Kelly
WARDEN GEORGE LOWTHER, <i>in their</i>)	
<i>individual capacities,</i>)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) entered by Magistrate Judge Maureen P. Kelly on July 14, 2021. (Docket No. 24). Plaintiff Robert P. Geschke, proceeding *pro se*, filed this action arising out of allegations that Defendants John Walton, Eric Schwartz and George Lowther violated his constitutional rights by preventing him from visiting with his children while he was confined at the Westmoreland County Prison. (Docket No. 8). Defendants have moved to dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket No. 16). The R&R recommends that Plaintiff’s claims should be dismissed based upon his failure to prosecute this action and, therefore, Defendants’ Motion to Dismiss should be granted. (*See* Docket No. 24 at 3, 5).

Service of the R&R was made on Defendants through the Court’s CM/ECF system, and they were advised that any objections to same were due by July 28, 2021. Service of the R&R was made on Plaintiff by mail, and he was informed that any objections were due by August 2, 2021. Thereafter, no party filed any objections to the R&R.

The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district judge must conduct a *de novo* review of any part of the R&R that has been properly objected to. Fed. R. Civ. P. 72(b)(2), (b)(3); 28 U.S.C. § 636(b)(1). Here, however, because no party filed any objections to the R&R, which explicitly stated that failure to file timely objections “will waive the right to appeal,” (Docket No. 24 at 5), this Court reviews the magistrate judge’s decision for plain error. *See Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006); *see also* Fed. R. Civ. P. 72(b), Advisory Committee Notes (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

In this case, upon careful review of the R&R and the entire record, including Plaintiff’s Complaint and Defendants’ Motion to Dismiss and supporting brief, (Docket Nos. 8, 16, 17), and in view of Plaintiff’s failure to respond to Defendants’ Motion to Dismiss as well as the Order to Show Cause by July 6, 2021 why his claims should not be dismissed based on his failure to respond to the Motion, (Docket No. 22), and finding no plain error on the face of the record, the Court will accept Judge Kelly’s recommendations. As such, the Court will adopt the R&R as the Opinion of the Court as more specifically set forth below.

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 24th day of September, 2021,

IT IS HEREBY ORDERED that the R&R (Docket No. 24) is ADOPTED as the Opinion of the Court.

For the reasons set forth in the R&R, IT IS FURTHER ORDERED as follows:

- (1) Plaintiff’s claims set forth in his Complaint are DISMISSED based upon his failure to prosecute this action; and

(2) Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6)
(Docket No. 16) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record

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